Supreme Court, U.S.
FILED
001229 NOV 14 2000
OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Houston G. Saffold

Vs.

Hillside Rehabilitation
Hospital, et al.

ON PETITION FOR A WRIT OF CERTIORARI
To The Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

Houston G. Saffold
538 First Street, S.W.
Warren, Ohio 44485
(330) 394-5032

29pp

QUESTIONS PRESENTED

#1. Can a judgement stand based upon fraud knowingly and deliberately used against a client?

#2. Can a judgement stand based upon false information knowingly and deliberately filed in a Court of Law by both Attorneys and the defendants in the case?

#3. In a Malpractice case, should summary judgement be granted when the Plaintiff's and the Defendants' Affidavits are in direct contradiction?

LIST OF PARTIES

( ) All parties appear in the caption of the case on the cover page.

(x) All parties DO NOT appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Houston G. Saffold

Petitioner/Plaintiff

Hillside Rehabilitation Hospital

Defendant/Respondent

Director/Hillside Rehabilitation

Defendant/Respondent

Terry A. Puet, M.D.

Defendant/Respondent

Chandler M. Kohli, M.D.

Defendant/Respondent

Robert L. Gilliland, M.D.

Defendant/Respondent

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

( ) For cases from Federal Courts:
The opinion of the United States Court of appeals appears at Appedix ___ to the petition and is
( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished

The opinion of the United States district court appears at Appendix ___ to the petition and is

( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished

( ) For cases from State Courts:
The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
(x) is unpublished

The opinion of the Court of Appeals of Ohio court appears at Appendix B to the petition and is

( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
(x) is unpublished

JURISDICTION

( ) For cases from Federal Courts
The date on which the United States Court of Appeals decided my case was _____.

( ) No petition for rehearing was timely filed in my case,

( ) A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____ .

( ) An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

( ) For cases from State Courts:
The date on which the highest state court decided my case was October 04, 2000. A copy of that decision appears at Appendix A.

( ) A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

( ) An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution, which provides, in part, that:

> "Nor shall any person be deprived of life, liberty, or property, without due process of law, nor denied equal protection of the laws...."

STATEMENT OF THE CASE

This case arose from the judgement of the Supreme Court of Ohio, which declined jurisdiction to hear the case and dismissed the appeal "... as not involving any substantial constitional question."

On September 24, 1992, Plaintiff-Petitioner voluntarily dismissed his complaint without prejudice, pursuant to Ohio Civil Rule of Procedure 41(A). This Original case was filed pursuant to the *"General Medical Malpractice Statute"* O.R.C. 2305.11(A), which in pertinent part gave the Plaintiff one (!) year in which to file the complaint.

In late December, 1994 Plaintiff received via regular U.S. mail, all file records of Plaintiff-Petitioner after being granted a motion to withdraw as counsel on a different County, namely, The Court of Common Pleas, Trumbull County, Ohio. The judge in that case did not notify Plaintiff-Petitioner that the motion had been filed, giving Plaintiff-Petitioner an option to file a motion in opposition until after the motion was granted.

While reviewing these returned file records in late December, 1994, Plaintiff-Petitioner was "surprised" by the discovery of a *"Medical Report"* from Dr. Robert L. Gilliland, M.D., and addressed to William C.H. Ramage, Attorney-at-law, who was at that time representing Plaintiff-Petitioner in an auto accident case, Assigned to him by the contractural law firm of the Plaintiff-Petitioner, namely, Richard D. Goldberg & Associates, Inc., of Youngstown, Ohio.

After consulting several law firms throughout the state of Ohio to represent him in this case up until a few months before the statutory limit expires, Plaintiff filed a different lawsuit, in a different country, where the newly *"Discovered, Fraudulent consealment occured"*.

This new lawsuit was filed pursuant to *"The Discovery Rule"*, incorporated in Ohio Civil Rule O.R.C. 2305.11(B), which in pertinent part gives the Plaintiff four (4) years after discovery to file a claim when there is a *"Fraudulent Consealment"* involved.

So it was *"Out of Desperation", "Not Pig-Headed Arrogance"* that this Plaintiff-Petitioner was forced to file this lawsuit "PRO SE" because all these law firms turned him down out of fear that they could not "beat" Richard D. Goldberg, who is now incarcerated for defrauding and betraying his clients just as he did the Plaintiff-Petitioner.

This new lawsuit was filed on May 13, 1998 several months before the statutory limit as provided in O.R.C. 2305.11(B).

This new lawsuit names new defendants and omitted several defendants in the first lawsuit simply because there are different issues involved.

For the foregoing reasons stated, the "Savings Statute" which the Respondents used as a defense, namely, O.R.C. 2305.19 should not "Apply" simply because it was not needed in this new lawsuit.

On March 11, 1999, the trial court filed a Judgement Entry granting summary motions filed by the defendant based on the expiration of the "Inapplicable Savings Statute", O.R.C. 2301.19.

A timely appeal was filed in the Seventh District Court of Appeals of Ohio. That court affirmed the Judgement of the trial court. Based on the same inapplicable statute.

The Supreme Court of Ohio, as stated earlier herein, declined jurisdiction on October 4, 2000.

REASONS FOR GRANTING THE PETITION

Summary judgement should never be granted without using caution. A court should always be careful to resolve doubts in favor of the non-moving party.

Petitioner met his burden of informing the trial court of the failure by the defendants to identify, securily, those portions of the records showing that there are no genuine issues of material fact on the essential elements of the nonmoving party's (Petitioner's) claim.

In fact, contrary to that which the Ohio Court of Appeals stated, met his burden and pointed out specific evidence in the record that would create a genuine issue of material fact as to the non-applicability of Ohio's Savings Statute, but rather the true applicability of Petitioner's Pursuant statute whose statutory limitation is favorable to his cause. Yet, the Appeals Court held otherwise.

A more elaborate explanation of this statutory controversy is contained in that section of this petition captioned: *"Statement of the case".*

Law, in the state of Ohio, has become a matter of trickery when pro se litigants are proceeding in Ohio's Courts.

Although Petitioner had raised the claim of fraud, all of Ohio's Courts ignored the claim.

This case involves matters of public and great general interest and a very substantial constitutional question. Petitioner requests that the important issues and questions be resolved by this court by allowing this case, granting jurisdiction, so that the important issues presented be reviewed on the merits.

CONCLUSION

The United States Constitution requires that this case be decided on the merits and that the cause be remanded or reversed.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Date: 11-9-2000

APPENDIX

APPENDIX A

THE SUPREME COURT OF OHIO

FILED
OCT 04 2000
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Houston G. Saffold, Appellant,	:	Case No. 00-1340
V.	:	
Hillside Rehabilitation Hospital et al., Appellees.	:	ENTRY

Upon consideration of the jurisdiction memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Houston G. Saffold.

(Mahoning County Court of Appeals; No. 99CA76)

"s/_____".
Thomas J. Moyer
Chief Justice

0012r100400

APPENDIX B

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

Houston G. Saffold Plaintiff-Appellant VS. Hillside Rehabilitation Hospital, et al., Defendants-Appellees	Case No. 99 CA 76 OPINION Mahoning County, Ohio JUN 27 2000 FILED Anthony Vivo, Clerk
Character of Proceedings: Judgement: Affirmed	Civil Appeal from Mohoning County Court of Common Pleas, Mahoning County, Ohio Case No. 98 CV 1146
Appearances: For Plaintiff-Appellant:	Mr. Houston G. Saffold 538 First Street, S.W. Warren, Ohio 44485
For Defendant-Appellees Terry A. Puet, M.D. and Chandler M. Kali, M.D. :	Attorney Brian D. Sullivan Reminger & Reminger Co. L.P.A. the 113 St. Clair Bld. Cleveland, Ohio 44114
For Rehabilitation Hospital and Counsel for Hillside Director of the Hillside Rehabilitation Hospital:	Attorney William E. Pfau Attorney Gabriel L. Goodard Pfau, Pfau & Marando P.O. Box 9070 Youngstown, Ohio 44513
For Robert L. Gilliland, M.D.:	Attorney David C. Comstock 100 Federal Plaza East Suite 926 Youngstown, Ohio 44503
Judges: Hon. Cheryl L. Waite Hon. Joseph J. Vukovich Hon. Gene Donofrio	Dated: June 27, 2000

Waite, J.

This timely appeal arises from a Judgement Entry to the Mahoning County Court of Common Pleas granting summary judgement in favor of Appellees in a medical malpractice case. For all of the following reasons, this Court affirms the judgment of the trial court.

The underlying procedural history of the case at bar is undisputed by the parties. On July 2, 1992, Houston G. Saffold ("Appeallant") filed a *pro se* complaint in the Trumbull County Court of Common Pleas alleging medical malpractice against a number of defendants. The relevant named defendants, for purposes of the instead appeal, were Chandler M. Kohli, M.D. ("Kohli"), Terry A. Puet, M.D. ("Puet") and the Hillside Rehabilitation Hospital/Director of the Hillside Rehabilitation Hospital ("Hillside").

On September 24, 1992, Appellant voluntary dismissed the complaint without prejudice pursuant to Civ.R. 41 (A). On May 14, 1998, Appellant re-filed the complaint in the Mahoning County Court of Common Pleas. This complaint again named Kohli, Puet and Hillside as defendants and alleged the same cause of action as in the original complaint. the new complaint also

including a new defendant, Robert L. Gilliland, M.D. ("Gilliland").

On September 25, 1998, Appellees Puet and Kohli files a joint motion for summary judgement arguing that the May 14, 1998, complaint contained the same allegation as the complaint Appellant voluntarily dismissed on September 24, 1992, and that Appellant had failed to re-file the complaint within the one year deadline provided for in R.C. 2305.19. On October 15, 1998, Appellee Hillside filed a motion for summary judgement based on the same grounds asserted by Appellees Puet and Kohli. Appellee Gilliland filed a motion for summary judgement on October 21, 1998, arguing that Appellant's medical malpractice claim against him was barred by the one year medical malpractive statute of limitations pursuant to R.C. 2305.11.

On March 11, 1999, that trail court filed it Judgement Entry granting the summary judgement motions filed by Appellees Puet, Kohli, Gilliland and Hillside. It is this judgement which forms the basis for the present appeal. In his sole pro se assignment of error, Appellant argues that:

> "THE TRIAL COURT SHOULD NOT HAVE GRANTED SUMMARY JUDGEMENT IN A MALPRACTICE CASE IN WHICH THE PLAINTIFF'S AND DEFENDANT'S [SIC] AFFIDAVITS WERE IN CONTRADICTION. THE TRIAL COURT ABUSED ITS DISCRETION."

When reviewing a trail court's granting a summary judgement, we review the evidence *de novo*, and apply the same standard used by the trial court. Varisco v. Varisco (1993), 91 Ohio App. 3d 542, 543, citing *Parenti v. Goodyear Tire & Rubber Co.* (1990), 66 Ohio App. 3d 826, 829; *Bell v. Horton* (1996), 113 Ohio App. 3d 363, 365. In addition, summary judgement under Civ. R. 56 is only proper when the movant demonstrates that:

> "(1) No genuine issue as to any material fact remains to be litigated;
>
> "(2) the moving party is entitled to judgement as a matter of law; and
>
> "(3) it appears from the evidence that reasonable minds could come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgement is made, that conclusion is adverse to that party."

Welco Industries, Inc. v. Applied Cos. (1993), 67 Ohio St. 3d 344, 346. These factors make it clear that summary judgement should be granted with caution, being careful to resolve doubts in favor of the nonmoving party. Id.

The party seeking summary judgement has the initial burden of informing the court of the motion's basis and identifying those portions of the record showing that there are no genuine issues of material fact on the essential elements of the nonmoving

party's claim. *Dresher v. Burt* (1996), 75 Ohio St. 3d 280,293. The movant must be able to point to some evidence of the type listed in Civ. R. 56(C) that affirmatively demonstrated hat the nonmoving party has no evidence to support its claim. *Id.*

If this initial burden is met, the nonmoving party has a reciprocal burden to, "** set forth specific facts showing that there is a genuine issue for trail and, if the nonmovant does not respond, summary judgement, if appropriate, shall be granted." *Id.*

In the case at bar, there are two separate and distinct statutory sections which operate to bar Appellant's claims against Appellees. As such, this Court will address the issue presents for appeal in light of these different statutes.

A. R.C. 2305.19 and Appellees Puet, Kohli, and Hillside.

In Ohio, if a plaintiff timely commences an action which is voluntarily dismissed after the applicable statute of limitations has expired, the plaintiff may employ R.C. 2305.19 (Ohio's "Saving Statue") and refile the action within one year of the date of dismissal. That statutory sections provides in relevant part as follows:

> "In an action commenced, or attempted to be commenced, if in due time a judgement for the plaintiff is reversed, or if the plaintiff

> **fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff *** may commence a new action within one year after such date..."**

R.C. 2305.19. (Emphasis added).

In the instant case, Appellant voluntarily dismissed the complaint against Appellee Puet, Kohli and Hillside on September 24, 1992. Viewing this in the light most favorable to Appellant, this Court presumes that the original action was timely filed. Therefore, pursuant to the plain language of R.C. 2305.19, Appellant had until September 24, 1993, to re-file the complaint. It is undisputed that Appellant did not recommence his action against Appellees Until May 14, 1998, more that five (5) year after the original dismissal.

In support of their respective motions for summary judgement, Appellees Puet, Kohli and Hillside attached copies of the original complaint as well as a copy of the notice of dismissal to demonstrate the fact that Appellant's most recent complaint was time barred. As such, the burden shifted to Appellant to point to specific evidence in the record that would create a genuine issue of material fact as to the applicability of Ohio's Saving Statute or some other statute of limitation favorable to his cause. This he failed to do.

In his response to Appellees Puet and Kohli's motions for summary judgment, Appellant submitted his own affidavit calling into question the date that Kohli last saw Appellant. Kohli had asserted that the last date he treated or saw Appellant was in May of 1991. Appellant presented evidence that Kohli may have actually treated Appellant as late as January of 1992.

Again, viewing the evidence in the light most favorable to Appellant, this contention is irrelevant. Assuming January of 1992 was the last date of treatment with Kohli, this was prior to the commencement of the original action. The original complaint was filed on July 3, 1992 and voluntarily dismissed on September 24, 1992. Pursuant to R.C. 2305.19, Appellant had until September 24, 1993 to re-file the complaint. As such, Appellant has failed to demonstrate how his more recent complaint is not time barred. Having demonstrated the applicability of Ohio's Saving Statute, Appellee Puet, Kohli and Hillside have demonstrated that there is no genuine issue of material fact and that they are each entitle to judgement as a matter or law.

B. R.C. 2305.1 and Appellee Gilliland

As Appellee Gilliland was not party to the original complaint, Gilliland does not rely on the saving statute. Instead, he argues that the claims against him are barred by the statute of limitations. In Ohio, the applicable statute of limitations for bringing a medical

malpractice case is codified in R.C. 2305.11. That statutory section provides in relevant part as follows:

> " (B) (1) Subject to division (B) (2) of this section, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the action has accrued...
>
> "*****
>
> "(B) (2) (a) In no event shall any action upon a medical, dental, optometric, or chiropractic claim be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim."

A cause of action for medical malpractice accrues when the patient discovers, or should have discovered, the resulting injury or when the physician-patient relationship is terminated, whichever occurs later. *Frysigner v. Leech* (1987), 32 Ohio St. 3d 38 paragraph one of syllabus. In support of his motion for summary judgement, Gilliland submitted his own affidavit which asserts, among other defenses, that the last time Gilliland had any contact with Appellant was on December 27, 1991.

Appellant's response to Gilliland's motion was utterly silent as to the last date of treatment. Indeed, other than a bared-bones conclusory allegation that, "Robert L. Gilliland did commit malpractice against [Appellant]" Appellant's complaint does not provide

any dates of treatment or any other details supporting his allegation of medical malpractice, such as the nature of the alleged injury or when he discovered the alleged injury. (Complaint, "Sixth Cause of Action"). Therefore, the only evidence before this Court as to when Appellant's medical malpractice cause of action accrued, for purposes of the statute of limitations, is the last date of treatment as asserted by Gilliland in his affidavit supporting his motion for summary judgment, December 27, 1991. Applying the statute of limitations pertaining to medical malpractice claims in a light most favorable to Appellant, the complaint against Gilliland must have been filed by December 27, 1992 to avoid being time-barred.

In addition to the statute of limitations, the statute of repose codified in R.C. 2305.11 (B) (2) (a) and (b) prevents the maintenance of a medical malpractive claim if commenced more that four (4) years after he alleged occurrence or omission which forms that basis of the claim, despite the last date of treatment or the date the alleged malpractice is discovered. In this case, Gilliland provided the trial court with an affidavit asserting the last date of treatment was December 27, 1991. In order to prevent being barred by the statute of repose, Appellant must have filed his complaint against Gilliland by December 27, 1995. By waiting until May 14, 1998, to assert his claim, the statute of repose bars his action against Gilliland by operation of law, regardless of when the alleged cause of action accrued. R.C. 2305.11 (B) (2) (b); *Sedar v. Knowlton Const. Co.* (1990), 49 Ohio St.3d 193, 195.

Although Appellant asserts that his affidavit and the affidavits of Appellees are in conflict, such conflict exists only with respect to the last dates Kohli and Puet treated Appellant. Again, using the dates asserted by Appellant and viewing the evidence in a light most favorable to him, it is clear that Appellant's claims are time-barred. Appellant failed to meet his reciprocal evidentiary burden in order to survive the multiple motions for summary judgment. Having failed to do so, Appellees' contention that there are no genuine issues of material fact dispute was left unchallenged. Thus, the trial court properly determined that Appellees were entitled to judgement as a matter of law.

Appellant, nevertheless, contends that the medical malpractice stature of limitations does not apply in this case because his complaint contains allegations of fraud. The allegations, however, are mere conclusory statements that Appellees committed fraud. Appellant provides no details or any evidence supporting these allegations and has failed to plead with specificity as required by Civ.R. 9(B).

The relevant statute of limitations is not determined by the, "form of the pleading, but rather, by the gist of the complaint." *Vick v. Stowe-Woodward Co.* (1998), 13 Ohio App. 3d 1378, 1382. In this case, the "gist of he complaint" is not more than a number of bald and conclusory allegations that Appellees, "committed both medical malpractice and fraudulent concealments," against Appellant. (Complaint). When Appellant had the reciprocal burden of pointing to

some evidence in the record indicating that he had an independent and viable cause of action based on fraud. Appellant presented no evidence whatsoever and elected to rest on the mere allegations contained in his pleadings. These are not sufficient to survive a motion for summary judgment. *Dresher, supra*, 75 Ohio St. 3d at 293.

This Court next addresses Appellant's contention that the trial court should have afforded him more procedural leeway since he was unrepresented by counsel. Specifically, Appellant argues that the trial court, had "a duty to order [Appellant] to either amend, or supplement his complaint before it could grant summary judgment or dismiss the action if there was a deficiency in the pleadings, etc." (Appellant's Brief, p. 5). Appellant is mistaken. This Court has previously explained that pro se civil litigants are to be held to the same standards as litigants who retain counsel. *Jancuk v. Jancuk* (Nov. 24, 1997), Mahoning App. No. 94 c.A. 221, unreported; *Nentwick v. Netwick* (Feb. 18, 1998), Jefferson App. No. 96-JE-27, unreported. As such, Appellant's argument to the contrary lacks merit.

Finally, Appellant argues that the trial court prematurely granted Appellees' motions for summary judgment. Civ. R. 56 (c) states that, "the motion [for summary judgment] shall be served at least fourteen days before the time fixed for hearing." The Ohio Supreme Court has interpreted this language to mean that a motion for summary judgment must be served as least fourteen days before the date on which the

court issues its entry granting the motion, whether or not there is a hearing scheduled on the motion. State ex. rel. *Freeman v. Morris* (1992), 65 Ohio St. 3d 458,460; State ex rel. *The V. Cos. v. Marshall* (1998), 81 Ohio St. 3d 467, 472.

In the case at bar, Appellant was served with the three summary judgment motions on September 25, 1998, October 15, 1998, and October 21, 1998. The trial court did not rule on these motions until March 11, 1999, over four months after the last motion was served. Therefore, the trial court more than complied with the time-frame contemplated by Civ.R. 56(C) as interpreted by our highest court.

Finding no merit in any of the arguments put forth by Appellant's sole assignment of error is overruled and the judgment of the Mahoning Count Court of Common Pleas is herby Affirmed.

Vukovich, J., concurs.

Donofrio, J., concurs.

APPROVED:

"s/ "

CHERYL L. WAITE, JUDGE

STATE OF OHIO : IN THE COURT OF APPEALS OF OHIO
:
MAHONING COUNTY : SS: SEVENTH DISTRICT

HOUSTON G. SAFFOLD, PLAINTIFF-APPELLANT, : CASE NO. 99 CA 76
:
VS.
:
HILLSIDE REHABILITATION HOSPITAL, ET AL., DEFNDANTS-APPELLEES. : JOURNAL ENTRY
:

FILED
June 27 2000
Anthony Vivo, Clerk
Clerk of Courts
Mahoning County Ohio

For the reasons stated in the opinion rendered herein, the assignment of error is overruled and it is the final judgement and order of this court that the judgment of the Court of Common Pleas, Mahoning County, Ohio, is affirmed. Costs to be taxed against Appellant.

"s/ "

"s/ "

"s/ "

JUDGES.

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

Clerk of Courts
Mahoning County, Ohio

HOUSTON G. SAFFOLD
PLAINTIFF

CASE NO: 98-CV-1146

March 11 1999

VS.

Files
Anthony Vivo, Clerk

HILLSIDE REHABILITATION HOSPITAL, ET AL
DEFENDANT

JUDGE R. SCOTT KRICHBAUM

JUDGMENT ENTRY

Before the Court in this cause is a Motion for Summary Judgment filed on behalf of Defendants Dr. Terry Puet and Dr. Chandler Kohli and separate motion for Summary Judgment file on behalf of Defendant Robert Gilliland M.D., Inc. and Defendants Hillside Rehabilitation Hospital and Director, Hillside Rehabilitation Hospital.

Plaintiff has filed his opposition to these motions and has moved the Court for a stay of proceedings.

Plaintiff's Motion for a Stay of Proceeding is not sufficient under Civ. R. 56(F) to justify withholding decision on the pending Motions for Summary Judgment.

Each of the Motions for Summary Judgment rely on the one year stature of limitations applicable to medical claims and set forth at RC. 2305.11 (B)(1). The movants have sufficiently identified the essential element of Plaintiff's case which they contend cannot be proved in support of a verdict in Plaintiff's favor, **Celotex Corp. V. Catrett 477 U.S. 317 (1986).**

Plaintiff's claims against the movants are governed by RC. 2305.11 (B)(1).

It is undisputed that Plaintiff's medical claims against the movants accrued more than one year prior to filing of this action. Neither Plaintiff's claims of fraud nor the "discovery rule" applicable to actions in medical malpractice have been shown to save Plaintiff from the operation of the one year prior of limitations.

Accordingly, the Motions for Summary Judgment are sustained. Plaintiff's Motion for Stay is overruled.

There being no just reason for delay, Judgment pursuant to Civ. R. 56 is hereby entered for Defendants Dr. Terry Puet, Dr. Chandler Kohli, Robert L. Gilliland, M.D., Inc. Hillside Rehabilitation Hospital and Director/Hillside Rehabilitation Hospital.

"s/ "
JUDGE R. SCOTT KRICHBAUM

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE(3) DAYS PER CIV. R. 5.